

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.197 of 2019
and
C.M.P.No.1598 of 2019**

Herriot Soupramaniane

...Petitioner

Vs

Nisha

...Respondent

Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 11.12.2018 made in I.A.No.389 of 2018 in O.S.No.87 of 2018 on the file of the learned III Additional District Judge (FAC), Puduchery and allow this Civil Revision petition.

For Petitioner : Mr.G.Krishnakumar

For Respondent : Mr.J.Srinivasa Mohan

ORDER

The revision petition has been filed by the defendant in O.S.No.87 of 2018 pending on the file of the III Additional District Court, Puducherry questioning the order in I.A.No.389 of 2018 dated 11.12.2018.

2.O.S.No.87 of 2018 had been filed by the respondent/plaintiff, Nisha, seeking a judgment and decree against the present petitioner Herriot Soupramaniane for a sum of Rs.18,02,000/- together with interest at the rate of 24% per annum on the principal sum of Rs.17 lakhs from the date of the suit till the date of realization and also for costs. In the said suit, in which written statement has been filed and issues framed, parties had been invited to tender evidence and the parties have also taken up such opportunity and I am informed that the plaintiff has also grazed the witness box.

3.The plaintiff had also filed I.A.No.389 of 2018 under Order 38 Rule 5 of Code of Civil Procedure initially calling upon the defendant to furnish security to the value of the suit claim, failing which, to bring to sale the

particular property mentioned in the schedule to the petition. A counter had been filed.

4. Primarily Mr.G.Krishnakumar drew attention to the averments made in the counter affidavit to point out that a prima facie case could not have been drawn by the learned Judge to grant the relief in I.A.No.389 of 2018. However, the averments in the said counter, I am sure are a replica of the written statement filed by the defendant in the suit. Based on the averments in the written statement, issues have also been framed and as stated, parties have taken up the opportunity to adduce evidence.

5. This present revision petition has been filed against the order in I.A.No.389 of 2018.

6. The learned District Judge while examining the petition averments and the counter had stated that the defences stated in the counter could be subject matters to be taken up during trial. However, as a fact had also found that the present revision petitioner/defendant is a French National and

therefore raised an apprehension that there could be a possibility of him either leaving the shores of the Country or disposing of the property and weighing those possibilities with the claim of the plaintiff had thought it appropriate to initially direct the present petitioner to furnish security and since there was a failure to do so had directed attachment of the property.

7.Mr.G.Krishnakumar, learned counsel for the petitioner stated that the said order suffers owing to lack of a prima facie finding that the plaintiff could succeed in the suit. However, there are other conditions also to be taken into account while deciding an application under Order 38 Rule 5 CPC. There are also conditions which are required to be examined, particularly, whether there is a possibility of the defendant alienating or dealing with the property mentioned or whether the defendant may leave the territorial jurisdiction of the Court making it impossible for execution of a decree, if at all a decree is passed in the suit. These are all factors to be considered quite apart from forming an opinion regarding the decision to be rendered in the suit without going into the merits. Therefore I would not interfere in the order passed. However, it appears that when the revision

petition came up before my learned Predecessor, the learned counsel for the present petitioner had made an offer to give another property as security instead of the property mentioned in the schedule to the petition in I.A.No.389 of 2018. When that was put to Mr.GKrishnakumar, the learned counsel stated that efforts have been taken to offer as security an alternate property.

8.At this stage, I hold that we need not wait to such an offer to come about. Let the order stand as it is. Trial has commenced. Let the trial go through its normal course. The parties must let in evidence with their free mind and try to establish their respective stand in the plaint and in the written statement. Let those statements be tested during cross examination. Let the learned Judge also apply his/her mind and analyze the evidence on record and pass a judgment. There are two possibilities, either the suit may be decreed or the suit may be dismissed. If the suit is decreed, then naturally the plaintiff would move forward for bring the property for sale to realize the fruits of the decree. At that stage, liberty is granted to the present petitioner/defendant in the suit to provide an adequately valued, alternate

property to be substituted instead of the property which is now under attachment. If such a property is offered, naturally the learned Judge may test its value, test its title and the petitioner may also examine these aspects and thereupon proceed against such property. I am not for a moment to state that such a stage would reach. It would all depend on the evidence recorded and I am confident that the learned Judge who is now examining the evidence on record would apply an independent mind, analyze the evidence and come to a conclusion on the issues raised in the suit on the basis of the evidence adduced and not otherwise.

9. With these observations, the Civil Revision Petition is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

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cse

Index: Yes/No

Internet: Yes/No

To

The III Additional District Court, Puducherry

C.R.P.(PD)No.197 of 2019

C.V.KARTHIKEYAN, J,

cse



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